

Notice of Allowability

Application No.

10/655,355

Examiner

Cheryl Juska

Applicant(s)

FOWLER, GREGORY D.

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 04/20/06.
2. ☒ The allowed claim(s) is/are 30-44.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 10/03
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

Cheryl Juska
Primary Examiner
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EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Please cancel non-elected claims 1-29.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed April 20, 2006, has been entered. Claims 19-21, 23, 24, 26, 27, 29-32, 34, 35, 38, 42, and 44 have been amended as requested. Thus, the claims are 1-44 with claims 1-18 being withdrawn as non-elected.
2. Applicant's amendment is sufficient to withdraw the objection to claim 19-29 as set forth in section 2 of the last Office Action. However, said amendment clarifies that said claims are drawn to the intermediate product of a reinforced secondary backing rather than a final product of a carpet comprising said reinforced secondary backing. As such, claims 19-29 are being withdrawn as non-elected. Specifically, a restriction requirement was made requiring election between the intermediate and final products (Office Action, 05/05/04, section 1) wherein applicant elected without traverse (last Office Action, 01/25/06, section 1) the final product claims. Since applicant has received an action on the merits for the final product invention, claims 19-29 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.
3. Said amendment and applicant's arguments are sufficient to overcome the prior art rejections based upon Woodall (US 5,484,639). In particular, independent claims 30 and 38 limit the secondary backing of a carpet to comprising a woven fabric having a plurality of parallel and evenly spaced warp yarns intermeshed with a plurality of weft yarns and a plurality of reinforcing yarns interconnected with the woven fabric and extending in the warp direction. As argued by applicant, Woodall teaches a secondary backing comprised of a woven fabric of

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evenly spaced yarns wherein some of said yarns are colored. In other words, Woodall does not teach a woven fabric of evenly spaced yarns having *additional* warp yarns interwoven therein.

Hence, the prior art rejections based upon Woodall in sections 4 and 6-8 of the last Office Action are hereby withdrawn in that Woodall does not teach or suggest additional yarns interwoven into the secondary backing. There would not be proper motivation to do so since Woodall's objective is merely to provide a visual guide pattern rather than for structural purposes such as reinforcement. Therefore, claims 30-44 are patentably distinct from the invention of the cited Woodall reference.

Allowable Subject Matter

4. An updated search of the prior art has produced the following new references:

a. US 6,776,109 and US 6,782,838, both issued to Segars, teach a system for controlling bow and skew in a carpet backing. Specifically, Segars teaches weft yarn markers for alignment of a primary backing in a tufting machine. Hence, Segars fails to teach yarn markers in the warp direction and one would not be motivated to modify said markers to the warp direction since the weft direction is monitored by the controller of the tufting machine. Additionally, it is noted that said yarn markers are not in a fabric employed for a secondary backing, but rather in a tufted primary backing. Therefore, claims 30-44 are found patentable distinct from the cited Segars references.

b. US 2004/0077242 issued to Layman discloses a woven carpet backing fabric having reinforcing strands interconnected thereto (abstract). In one embodiment, the reinforcing strands are interwoven into the fabric (abstract, Figure 5, and section [0029]). Thus, while the Layman

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invention teaches features of at least independent claims 1, 14, and 19, drawn to the intermediate product of a reinforced woven fabric, claims 30-44 are patentably distinct from the teachings or suggestions of the Layman reference. Specifically, the reinforced fabric of Layman is employed as a tufted primary backing rather than as a secondary backing of a carpet as recited in claims 30-44.

Therefore, claims 30-44 are allowed over the prior art.

5. This application is in condition for allowance except for the presence of claims 1-29 directed to an intermediate product non-elected without traverse. Accordingly, claims 1-29 have been cancelled by the attached Examiner's Amendment.

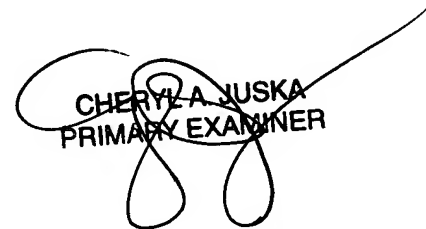
6. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
July 5, 2006